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September 8, 2008

Thomasenia Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

MUR # 6081

Re: **FEC Complaint: American Issues Project, Ed Failor, Jr., Ed Martin, and Harold Simmons, Respondents**

Dear Ms. Duncan:

I write to bring this complaint against American Issues Project, Inc.; Ed Failor, Jr.; Ed Martin (collectively, "American Issues Project" or "AIP"); and Harold Simmons. The facts indicate that AIP knowingly and willfully failed to register and report as a political committee with the Federal Election Commission, accepted excessive contributions, and failed to file the proper reports with the Commission, and that Mr. Simmons made contributions far in excess of his biennial aggregate limit.

A. FACTS

On August 21st an organization calling itself the American Issues Project began airing an advertisement in Ohio and Michigan that expressly advocates the defeat of the presidential candidacy of Senator Barack Obama. The advertisement can be viewed at AIP's website: <http://www.americanissuesproject.org>.

AIP first surfaced on August 6th; on that day a dormant Delaware corporation named Avenger, Inc. (and previously known as Citizens for the Republic, Inc.) changed its name to "American Issues Project, Inc." The corporate documents are attached. The current board members include Ed Failor Jr. and Ed Martin. See <http://www.americanissuesproject.org/about-aip.html>.

On August 19th, the organization filed a Form 5 "Report of Independent Expenditures Made and Contributions Received" with the Commission. On this form, which was certified under penalty of perjury by Nancy H. Watkins, AIP disclosed that it spent \$2,878,872.75 on an independent

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expenditure opposing Barack Obama in connection with the convention. The form also discloses that this precise amount – \$2,878,872.75 – was contributed to AIP from Harold Simmons on August 12th. AIP has not filed any other report with the Commission as of the date of this Complaint.

There is no public information regarding any AIP activity other than the above-referenced independent expenditure; AIP's spokesperson has said only that it "plans to do" unspecified policy work in the future. See B. Smith, "Obama to DOJ: Block Terrorist Ad," *Politico*, Aug. 25, 2008, at <http://www.politico.com/news/stories/0808/12816.html>.

Obama for America, the principal campaign committee of Barack Obama, has filed three letters with the Department of Justice seeking a full investigation of AIP's activities. Those letters are attached.

B. LEGAL ARGUMENT

1. AIP is a Federal Political Committee

AIP is an entity that adopted the corporate existence and tax exemption of another corporation in August of an election year, that has spent almost three million dollars on independent expenditures attempting to influence the presidential election, and that has engaged in no other activity since its inception. Those facts are not in dispute.

AIP claims on its Form 5 that it is a qualified nonprofit corporation ("QNC") under 11 C.F.R. §114.10, a status which would allow it to make independent expenditures. However, the facts plainly indicate that AIP cannot claim QNC status.

To be a QNC, AIP must be described in L.R.C. § 501(c)(4). See 11 C.F.R. § 114.10(c)(5). That requirement, in turn, depends on an organization having as its primary purpose the "promotion of social welfare," which "does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. § 1.501(c)(4)-1(a)(2). Both the Supreme Court and the Commission have noted that if a QNC's "independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); see *Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 Fed. Reg. 35292, 35304 (July 6, 1995) (cautioning that if a qualified nonprofit corporation's major purpose is campaign activity, "it will be treated as a political committee under the FECA and subject to the applicable regulations").

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AIP's corporate history also raises the question of whether AIP, under its previous name "Citizens for the Republic" ever accepted any direct or indirect corporate funding. QNCs are forbidden from taking any such donations, *see* 11 C.F.R. § 114.10(c)(4)(ii), and the Commission interprets this regulation to bar even *de minimis* corporate donations. *See* 60 Fed. Reg. at 35301 ("knowingly accepted prohibited donations will void a corporation's exemption, even if the corporation accepts only a *de minimis* amount"). When Citizens for the Republic was first founded, it was reported that it has secured \$17 million in "solid financial commitments." *See* Marc Ambinder, "Krugman's Disciples Plan Rebirth of Conservative Movement," *The Atlantic*.com, at http://marcambinder.theatlantic.com/archives/2007/10/17m_pledges_in_the.php: The Commission should investigate to ensure that none of the \$17 million came from corporate sources. If any of the previous funding did stem directly or indirectly from a corporation, then AIP cannot be considered a QNC.

The facts of AIP's formation, and the percentage of its funds devoted to influencing the presidential election (100%), put the lie to any claim to QNC status. AIP has done nothing other than collect and spend funds to defeat Barack Obama's candidacy. There is no question that its "major purpose" is federal campaign activity; therefore, it should register and report to the Commission as a federal political committee, and obey both the source restrictions and contribution amount limitations. *See* 2 U.S.C. § 441a(a)(1). Its failure to do so is a knowing and willful violation.

2. AIP Has Failed to File a Post-Convention Independent Expenditure Report

AIP's Form 5 indicated that its advertisement was in connection with the convention. And yet, a substantial portion of its advertisement – well over the \$10,000 independent expenditure reporting threshold – aired after the convention. The post-convention advertisements can only be considered to be made with respect to the general election, and yet AIP has not filed another Form 5 report with the Commission. AIP is therefore in violation of the independent expenditure reporting requirements. *See* 11 C.F.R. § 109.10(c).

3. Harold Simmons Has Violated the Biennial Aggregate Limit

Harold Simmons, the sole reported donor to AIP, has violated the \$5,000 per year contribution limit to AIP, because AIP is a federal political committee. *See* 2 U.S.C. § 441a(a)(1)(C). However, even if AIP were properly considered a QNC, Mr. Simmons would still be in gross violation of the federal contribution limits.

Individuals may only make a total of \$108,200 in federal contributions during the calendar years 2007 and 2008; of this amount, only \$65,500 may be given in federal contributions to organizations other than candidate committees, and no more than \$42,700 may be given in

federal contributions to organizations other than candidate committees or national party committees. See 2 U.S.C. § 441a(a)(3) (as indexed for inflation).

Under Commission regulations, this amount includes not only contributions to federal candidates and political committees, but also contributions in response to a "communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified candidate." 11 C.F.R. § 100.57(a). The aggregate limit also applies to "contributions made to other organizations or individuals but earmarked for political purposes," which are included in the definition of a federal contribution. *Buckley v. Valeo*, 424 U.S. 1, 78 (1974); see *Federal Election Comm'n v. National Educ. Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (defining federal contributions as including funds "committed to expenditures subject to regulation under FECA").

AIP's Form 5, in and of itself, provides a *prima facie* case of a knowing and willful violation of the biennial contribution limits by Mr. Simmons. AIP spent every penny of Mr. Simmons' contribution on an independent expenditure attacking Barack Obama, making it extremely likely that the funds were given in response to a communication describing how they would be spent. See 11 C.F.R. § 100.57. Moreover, by listing him on its Form 5, AIP is admitting that the "contribution was made for the purpose of influencing" AIP's independent expenditure. *Id.* § 109.10(e)(1)(vi). Thus, on the face of AIP's Form 5 – submitted under penalty of perjury – it is clear that Mr. Simmons' contribution was in gross violation of the biennial limits.

This violation was knowing and willful. Mr. Simmons is well aware of the penalties for violating the aggregate limits; the Commission has found that Simmons twice before violated the individual aggregate spending limits. He was fined \$19,800 by the Commission for surpassing the limit (at that time, a \$25,000 one-year limit) by \$29,250 in 1989 and \$69,926 in 1990. He was also sued by his daughters over allegations that he made hundreds of thousands of dollars in federal political contributions in their names, in violation of 2 U.S.C. § 441f. See S. Fennes, "Family Fund Shows How Rich Spread Political Gifts," *Dallas Morning News*, May 4, 1987, at A1.

Mr. Simmons has not only been accused of repeated violations of federal election law, he is now a third-time offender of the individual aggregate limits. He has shown no respect for federal election law generally, and no regard for the individual aggregate contribution limits specifically. This time he has exceeded the two-year aggregate limit by not tens of thousands, but by millions of dollars. The Commission should act quickly and forcefully in this matter.

C. REQUESTER ACTION

These are knowing and willful violations. We ask that the Commission conduct a prompt and vigorous investigation and seek the full remedies available under the law, including the

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Page 5

maximum fine: 200% of the amount of the contribution or expenditure at issue. See 2 U.S.C. §437g(a)(5)(B), (6)(B).

Very truly yours,



Robert F. Bauer
General Counsel
Obama for America

SUBSCRIBED AND SWORN to before me this 8th day of September, 2008.


Notary Public

My Commission Expires:
FRANCES G. WADE
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES SEPT. 02, 2010

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FEC FORM 5

REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED

To Qualifying Persons (Other than Political Committees) Making Qualified Nonprofit Corporations

PAGE 1/4
08/18/2008 17:28

1. (a) Name of Individual, Organization or Corporation American Issues Project, Inc.		3. FEC Identification Number C 000000000
(b) Address (number and street) <input type="checkbox"/> check if different than previously reported 301 W. Platt Street, #353		
(c) City, State and ZIP Code Tampa FL 33606		
2. Corporate filers only Is the filer a qualified nonprofit corporation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Individual filers only Name of Employer		Occupation

4. TYPE OF REPORT (check appropriate boxes):	
(a) <input type="checkbox"/> April 15 Quarterly Report	<input checked="" type="checkbox"/> 24-Hour Notice <input type="checkbox"/> 48-Hour Notice
<input type="checkbox"/> July 15 Quarterly Report	
<input type="checkbox"/> October Quarterly Report	
<input type="checkbox"/> January 31 Year-End Report	
(b) Is this report an amendment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
5. COVERING PERIOD: FROM 01 / 01 / 2008 THROUGH 08 / 18 / 2008	
6. TOTAL CONTRIBUTIONS	2878872.75
7. TOTAL INDEPENDENT EXPENDITURES	2878872.75

Under penalty of perjury, I certify that the independent expenditures reported herein were not made with the approval or prior consent of, or in consultation with, or at the request or suggestion of, a candidate or committee or agent of a candidate or committee or a political party committee or its agent. In addition, if the independent expenditures reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

SIGNATURE

DATE

Nancy H. Watkins

08/18/2008

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. 437g.

For further information, contact:

Federal Election Commission, 999 E. 9th Street, NW, Washington, D.C. 20543. Toll Free 800-426-6920, Local 202-696-1100

500071

FEC Schedule B (Revised 06/2007)

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**SCHEDULE 6-A
ITEMIZED RECEIPTS**

PAGE 2/4

Any information copied from such Reports and Statements may not be used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

NAME OF FILER (in Full)
American Issues Project, Inc.

A. Full Name (Last, First, Middle Initial)

Harold Blomquist
Mailing Address
5430 LBJ Freeway, #1700

Date of Receipt

08 / 12 / 2008

City State Zip Code
Dallas TX 75240

Transaction ID: P68.000001

FEC ID number of contributing
federal political committee.

C

Amount of Each Receipt This Period

2878872.75

Name of Employer

Contran Corporation

Occupation

S.S.O.

SUBTOTAL of Receipts This Page (optional)

2878872.75

TOTAL This Period (last page carry total to Line 6)

2878872.75

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SCHEDULE E-E
ITEMIZED INDEPENDENT EXPENDITURES

PAGE 3/4
FOR LINE 7 FOR FORM 8

NAME OF FILER (in full)

American Issues Project, Inc.

Full Name (Last, First, Middle Initial) of Payee
Mentzer Media Services, Inc.

Mailing Address
600 Fairmount Avenue, #308

City State Zip Code
Towson MD 21206

Date
08 / 18 / 2008
Amount
280000.00

Purpose of Expenditure
television ad (Know Enough?)

Category/
Type

Office Sought: ☐ House ☐ Senate State: _____
Presidential ☒ President District: _____

Name of Federal Candidate Supported or Opposed by Expenditure:
Barack Obama

Check One: ☐ Support ☒ Oppose

Calendar Year-To-Date Per Election
for Office Sought 280000.00

Disbursement For: ☐ Primary ☐ General
☐ Other (specify) Convention

Full Name (Last, First, Middle Initial) of Payee
ErbenderCo, Inc.

Mailing Address
1218 Grandview Avenue

City State Zip Code
Pittsburgh PA 15219

Date
08 / 18 / 2008
Amount
1000.00

Purpose of Expenditure
website ads (Know Enough?)

Category/
Type

Office Sought: ☐ House ☐ Senate State: _____
Presidential ☒ President District: _____

Name of Federal Candidate Supported or Opposed by Expenditure:
Barack Obama

Check One: ☐ Support ☒ Oppose

Calendar Year-To-Date Per Election
for Office Sought 2801000.00

Disbursement For: ☐ Primary ☐ General
☐ Other (specify) Convention

Full Name (Last, First, Middle Initial) of Payee
McCarthy Marcus Herring, Ltd

Mailing Address
1850 M Street, N.W., #295

City State Zip Code
Washington DC 20038

Date
08 / 18 / 2008
Amount
8217.45

Purpose of Expenditure
media production (Know Enough?)

Category/
Type

Office Sought: ☐ House ☐ Senate State: _____
Presidential ☒ President District: _____

Name of Federal Candidate Supported or Opposed by Expenditure:
Barack Obama

Check One: ☐ Support ☒ Oppose

Calendar Year-To-Date Per Election
for Office Sought 2803117.45

Disbursement For: ☐ Primary ☐ General
☐ Other (specify) Convention

(a) SUBTOTAL of Itemized Independent Expenditures 2863117.45

(b) SUBTOTAL of Unitemized Independent Expenditures

(c) TOTAL Independent Expenditures
(carry total from last page forward to Line 7)

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28038820103

**SCHEDULE E-
ITEMIZED INDEPENDENT EXPENDITURES**

PAGE 4/4
FOR LINE 7 FOR FORM 8

NAME OF FILER (in P.A.)

Angerion Issues Project, Inc.

Full Name (Last, First, Middle Initial) of Payee
McCarthy Marcus Henning, Ltd.

Date

06 / 08 / 2008

Mailing Address

1850 M Street, N.W., #235

Amount

15755.30

City

Washington

State

DC

Zip Code

20036

Purpose of Expenditure

research (Know Enough?)

Category/
Type

Office Sought:

☐

House

State: _____

Presidential

☐

Senate

District: _____

☒

President

Name of Federal Candidate Supported or Opposed by Expenditure:

Barack Obama

Check One:

☐

Support

☒

Oppose

Calendar Year-To-Date Contribution
for Office Sought

2878872.75

Disbursement For:
2008

☐

Primary

☐

General

☐ Other (specify)

Convention

(a) SUBTOTAL of Itemized Independent Expenditures

15755.30

(b) SUBTOTAL of Unitemized Independent Expenditures

(c) TOTAL Independent Expenditures

(carry total from last page forward to Line 7)


2878872.75

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Federal Election Commission	
ENVELOPE REPLACEMENT PAGE FOR INCOMING DOCUMENTS	
The FEC add this page to the end of this filing to indicate how it was received.	
<input type="checkbox"/> Hand Delivered	Date of Receipt
<input type="checkbox"/> USPS First Class Mail	Postmarked
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<input type="checkbox"/> USPS Priority Mail	Postmarked
Delivery Confirmation™ or Signature Confirmation™ Label <input type="checkbox"/>	
<input type="checkbox"/> USPS Express Mail	Postmarked
<input type="checkbox"/> Postmark Illegible	
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<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
	Next Business Day Delivery <input type="checkbox"/>
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input checked="" type="checkbox"/> Other (Specify): Webform # 239	Date of Receipt or Postmarked 8/19/07
	8/21/08
PREPARER	DATE PREPARED
(3/2005)	

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:50 AM 08/06/2008
FILED 09:54 AM 08/06/2008
BY 080848208 - 4354883 FILE

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, AVENGER, Inc.
organized and existing under the laws of the State of Delaware, hereby certifies as follows:

(1) That at a meeting a vote of the members of the governing body was taken for and against the amendment to the Certificate of Incorporation, said Amendment being as follows:

To change the name of the entity from Avenger, Inc.
to American Issues Project, Inc.

(2) That said amendment was duly adopted in accordance with the provisions of Section 342 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 4th day of August, A.D. 2008.

By 
Authorized Officer

Name: Paul Erickson, President
Printer Type

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State of Delaware
 Secretary of State
 Division of Corporations
 Delaware 11:39 AM 04/02/2008
 FILED 11:39 AM 04/02/2008
 SV 09038323 - 4334565 FIZ

**STATE OF DELAWARE
 CERTIFICATE OF AMENDMENT
 (A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Citizens for the Republic, Inc.
 organized and existing under the laws of the State of Delaware, hereby certifies as follows:

(1) That at a meeting a vote of the members of the governing body was taken for and against the amendment to the Certificate of Incorporation, said Amendment being as follows: In change the name of the entity from Citizens for the Republic, Inc. to Avenger, Inc.

(2) That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 19 day of March, A.D. 2008.

By: *Paul Erickson*
 Authorized Officer

Name: Paul Erickson
 Print or Type

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State of Delaware
 Secretary of State
 Division of Corporations
 Delivered 07:37 PM 08/17/2007
 FILED 07:26 PM 08/17/2007
 SRV 070381999 - 4354363 FILE

**STATE OF DELAWARE
 CERTIFICATE OF INCORPORATION
 A NON-STOCK CORPORATION
 OF
 CITIZENS FOR THE REPUBLIC, INC.**

- FIRST:** The name of the corporation is:
- Citizens for the Republic, Inc.**
- SECOND:** The address of the registered office of the corporation in the State of Delaware is located at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, located in the County of New Castle. The registered agent in charge thereof is Corporation Service Company.
- THIRD:** The purpose of the corporation, Citizens for the Republic, Inc., is to act for any lawful purpose for a social welfare organization pursuant to section 501(c)(4) of the Internal Revenue Code of 1986 (or the corresponding section of any future federal tax code).
- FOURTH:** The corporation shall not have any capital stock and the conditions of membership shall be stated in the corporation's Bylaws.
- FIFTH:** The name and mailing address of the incorporator is as follows:
- Sharon C. Nelson
 c/o Foley & Lardner LLP
 321 N. Clark Street, Suite 2800
 Chicago, Illinois 60610
- SIXTH:** The corporation is organized exclusively for the promotion of social welfare, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(4) of the Internal Revenue Code, as from time to time amended, or the corresponding section of any future tax code.

Notwithstanding any other provisions in these articles of incorporation, the corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code, as from time to time amended, or the corresponding section of any future tax code.

Upon dissolution of the corporation, and after paying for, or providing for its debts, by majority vote, the corporation's Board of Directors shall distribute the corporation's remaining assets for one or more exempt purposes within the meaning of section 501(c)(4) of the Internal Revenue Code, as from time to time amended, or the corresponding section of any future tax code, or shall distribute

any of the corporation's remaining assets to the Federal, state or local government for a public purpose. Any assets not so distributed shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is then located, exclusively for such purposes.

I, the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 17th day of May, A.D. 2007.

By:


Sharon C. Nelson, Incorporator

State of Delaware Annual Franchise Tax Report

CITIZENS FOR THE REPUBLIC, INC.			
FULL NAME	INCORPORATION DATE	RECORD REVISION DATE	TAX ID
4354383	2007/03/17	2008/03/02	2007
PRINCIPAL PLACE OF BUSINESS			PAYEE NUMBER
4904 Oxbow Avenue			312/832-6566
Sioux Falls SD 57106 United States			
REGISTERED AGENT			AGENT NUMBER
CORPORATION SERVICE COMPANY			9000014
2711 CENTERVILLE ROAD SUITE 400			
WILMINGTON		DE 19808	
BUSINESS TYPE	STOCK CLASS	NO. OF SHARES	PAY VALUE / SHARE
Non-Stock Company			
DIRECTORS			
NAME	STREET/CITY/STATE/ZIP	TITLE	
Stephen Moore		President	
4904 Oxbow Avenue			
Sioux Falls SD 57106 United States			
DIRECTORS	NAME	STREET/CITY/STATE/ZIP	
	Paul Erickson		
	4904 Oxbow Avenue		
	Sioux Falls SD 57106 United States		
	Stephen Moore		
	4904 Oxbow Avenue		
	Sioux Falls SD 57106 United States		
	Richard Shann		
	4904 Oxbow Avenue		
	Sioux Falls SD 57106 United States		
Total number of Directors: 3			
NOTICE: Pursuant to § Del. C. 302(b), if any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.			
Paul Erickson			
4904 Oxbow Avenue			Executive Director
			2008-04-01
Sioux Falls SD 57106 United States			

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